

### REMARKS

As noted in Applicant's representative's telephone call to the Examiner of September 11, 2008, this Second Supplemental Response is being filed to amend the Supplemental Response of August 28, 2008, which was filed to amend the Response filed on June 30, 2008. Specifically, Applicant wishes to elect claims 1-14 (Group 1) as previously submitted, but wishes to do so *with traverse*. Applicant also wishes to correct claim dependencies via amendment and add 20 new dependent claims.

#### 1. Traversal of Restriction Requirement

The Examiner sets forth the standard for restriction under PCT Rule 13.1, and requires Applicant to choose among the method claims (group 1, claims 1-14) and the product claims (group 2, claims 15-22). Applicant has elected Group 1, but traverses the restriction requirement.

No restriction should be required because there is a technical relationship between the method claims and the product claims in this case. Specifically, the products of the present invention are structures with closely controlled features and properties that are specifically due to the method of preparation. This is evidenced by the finding of unity in the international phase of prosecution, and the Examiner's citation to the Li *et al.* reference in the U.S. phase does nothing to suggest otherwise.

The Examiner has stated that "[t]he inventions of groups 1 and 2 are linked together to form a single general inventive concept by the apparatus<sup>1</sup> of group 2. However, the invention is known in the art as shown by Li et al. [US 2002/0197261], who teach targetable polymeric

---

<sup>1</sup> The claims of group 2 are not directed to apparatus; they are product-by-process claims.

nanoparticles comprising Adriamycin conjugated to a mAb-PEG-PG carrier (para. 0032).

Therefore the inventions do not form a general inventive concept, as they do not share a common special technical feature over the prior art." (5/30/8 OA, p. 2, ¶ 3.)

The Li reference does not anticipate the present invention such that "the invention is known in the art." Referring to paragraph 32 of the Li reference, the word "nanoparticle" is present, but the nanoparticles of Li are final products of Li, and these nanoparticles are micellar products formed by aggregation of amphiphilic chains (see ¶¶ 25, 92, 42, 94, and 95). Such interaction produces a material which is much more loosely held together than the products of the present invention. The present invention requires that nanoparticles are used as one of at least three starting materials (the other two starting materials being flexible hydrophilic polymers and functional molecules), in a reaction which produces a nanoparticle conjugate, i.e. a product containing a nanoparticle conjugated to other materials. In other words, the nanoparticle conjugates of the present invention contain nanoparticles as one of several closely bound components.

Close review of the claims of the present invention shows that the Li nanoparticles do not contain the other features of the present claims. Furthermore, the nanoparticles of Li could neither be made by, nor would be suitable for use in, the methods of the present invention, because of their lack of stability. In view of the foregoing, Applicant respectfully but vigorously requests withdrawal of the restriction requirement and examination of all pending claims.

II. Amendments to the Claims

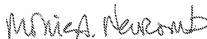
Applicant has made minor amendments to claims 8-12, 15-18, and 21 to correct dependencies. Applicant has added new claims 23-42. Entry of the amendments, even to those claims that are currently withdrawn, is respectfully requested. Each of the new dependent claims has been previously presented as a dependent claim of a different independent claim: the new claims are simply repeated to claim the scope of the invention in accordance with the original PCT application's multiply dependent claims.

III. Conclusion

Applicant submits herewith \$1000 in payment of 20 new dependent claims. It is believed that no further fees are due with this amendment, however, if the Examiner considers any fees due in conjunction with this or any future communication, authorization is given to charge payment of such fees or credit any overpayment to Deposit Account No. 50-1170.

Should the Examiner have any questions or comments that would expedite prosecution of this application, the Examiner is invited to contact the undersigned at the telephone number appearing below.

Respectfully submitted,



Mollie A. Newcomb  
Reg. No. 50,915

Date: September 23, 2008

Boyle Fredrickson, S.C.  
840 North Plankinton Avenue  
Milwaukee, WI 53203  
Telephone: (414) 225-9755  
Facsimile: (414) 225-9753